

## **An Evaluation of the Village Courts**

This seems to be an appropriate place for making certain general observations about Village Courts established in the two principal tribal areas—the Khasi and Jaintia Hills and the Garo Hills. The composition of these courts and the mode of appointment of members to these courts—seem to have been so designed as to maintain a balance between the traditional element and the modern approach. Due representation, for example, has been given to the headmen, thus maintaining a certain amount of contact with the customary ethos. At the same time, elected members appointed to these courts bring in a modicum of dynamism. The independence of these tribunals from governmental interference in the decision of disputes, though not spelt out in so many words in the relevant statutory Instruments, seems to have been achieved in substance.

As regards the approach shown by the Village Courts, they have, in most cases taken into account the essential customary law, without being hide-bound by rigid rules. The law expects that they will show familiarity with local thinking and reflect the modes of thought of the people—without, at the same time, sacrificing the objective approach. A study of their decisions—including, in particular, decisions rendered in those matters that ultimately went to the High Court—discloses that this expectation has been substantially realised in a pretty large number of cases decided by Village Courts. Most of their decisions exhibit a keenness to do substantial justice between the parties without being swayed by formal and categorical generalisations. It goes to their credit that their judgments have mostly been upheld by the first appellate court—and often in second appeal. Quite a large number of their decisions figure in the case law dealt with in later chapters of this study and a comparison of their judgments with the judgments pronounced at the appellate level seems to show that no serious dissatisfaction has been expressed with judgments of the courts of first instance.

It seems, then, legitimate to comment that these courts represent a

happy mean between the traditional and the modern, the conventional (Indian) and the Western pattern. No doubt, generalisations are hazardous. Moreover, the general experience is that however well-equipped and well-functioning a court of first instance may be, litigants who can afford to do so will always seek the assistance of the appellate courts. People in the tribal areas do not seem to be an exception to the general experience. Again, with increasing urbanisation and individualisation, it is likely that Village Courts may lose some of their prestige.

As has been observed by two perceptive writers<sup>1</sup>

As Government enlarges its scope and strengthens its authority, it will include in its province much that in old days had been left to the jurisdiction of the *pater familias* or the Village Council. It will also insist on a uniform system to replace the varying customs of individual units.

Political conditions and social climate are factors that elude any definite forecasts. However, so far as past experience of the working of these courts goes, there is no room for despair or for harbouring any misgivings. A knowledgeable writer has given us an account of the functioning of tribal courts in Africa and offered the comment that the tribal courts "appear to be determined to do summary, cheap and effective justice to the concerned parties that seek their services. There are no teasing and tiring laws' delays, no hair-splitting interpretations of legal terminology, and no ruinous and no wasteful expenditure suffered by litigants."<sup>2</sup> The same comment could, perhaps, be offered about the Village Courts in the tribal areas of Meghalaya.

By and large the working of these courts shows that the balance between the preservation of indigenous institutions and the demands of the modern age is being maintained. In tribal areas, one comes closest to the institutions of the past, and some of the environmental factors which have accounted for local traditions still continue to exercise an important role in social life—and, consequently—in legal institutions. Institutions coming with the modern state have only a partial impact, as against the traditional approach reflecting the philosophy of social life. The prime mover in the social and political system in tribal areas is the need for harmony and mutual co-operation. This broad objective seems to have been substantially achieved in Meghalaya as the working of the Village Courts shows.

In this context, it would be of interest to note that many of the customs and institutions found among the tribal areas in Meghalaya have their counterparts in the customs and institutions prevalent in the tribal

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1. Jacquetta Hawkes and Woolley, *Pre-History and the Beginnings of Civilisation*, as quoted by V. Raghavaiah in *Tribal Justice* 7 (1977).
  2. V. Raghavaiah, *Tribal Justice* 15-16 (1977).

areas of other parts of India.<sup>3</sup> In fact, a comparative study of the rules of tribal law and the institutions for their enforcement in the various areas in India may be expected to reveal interesting similarities—though, no doubt—there may be differences, as well. Some of the tribal institutions in Southern India afford interesting parallels. For example, among the Kanikkars of Kerala, the headman (Muthu Kani) disposes of all social, religious and agricultural matters. Among the Koyas of Andhra Pradesh, there is the Kula Panchayat, having jurisdiction over the village. Among the Chenchus in Andhra Pradesh, there is a headman for each hamlet of twenty to fifty huts, and above him, there is a chief popularly known as “Reddi” who disposes of civil and criminal disputes. The village panchayats in Jansar Bawar have been extensively documented and commented upon.<sup>4</sup>

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3. See also chapter 8, *infra*.

4. *Supra* note 2 at 46-52